

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

SANTIAGO JOSE SANCHEZ,
Appellant.

No. 2 CA-CR 2017-0389
Filed October 18, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201602437
The Honorable Kevin D. White, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
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Counsel for Appellee

Michael Villarreal, Florence
Counsel for Appellant

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MEMORANDUM DECISION

Judge Eppich authored the decision of the Court, in which Presiding Judge Vásquez and Judge Espinosa concurred.

E P P I C H, Judge:

¶1 After a jury trial, Santiago Sanchez was convicted of one count of conspiracy to commit first-degree murder, two counts of dangerous or deadly assault by a prisoner, one count of aggravated assault, and one count of promoting prison contraband. He now appeals, arguing there is insufficient evidence to support three of his convictions and his consecutive sentences constitute impermissible double punishment under Arizona law. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdicts. *See State v. Allen*, 235 Ariz. 72, ¶ 2 (App. 2014). In 2016, Sanchez was an inmate at the Pinal County Jail. One afternoon, two correctional officers, a lieutenant and a sergeant, were conducting routine rounds while Sanchez and other inmates were in the common area of their pod. When the officers entered, an inmate sitting at the same table as Sanchez's codefendant, Mauricio Moraga, yelled out, "The lieutenant is in the pod." Sanchez and another codefendant, Robert Villalobos, then attacked the lieutenant with metal "shanks,"¹ ultimately causing the lieutenant to suffer serious injuries.

¶3 When the sergeant attempted to intervene in the attack, Moraga stepped in his path in a "fighting stance," and resisted the sergeant's effort to reach the lieutenant, Villalobos, and Sanchez. After the sergeant was able to move past Moraga, Villalobos stood up from attacking the lieutenant and looked at the sergeant while holding a shank in his hand. Other corrections officers intervened, and while Sanchez was being detained, he stated he had killed the lieutenant. Two shanks were recovered during the incident, and subsequent investigation revealed pieces of metal missing from the bunks of Sanchez and Moraga, and sandpaper in Villalobos's cell.

¹An officer testified a "shank" is a piece of metal sharpened to use as a knife.

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¶4 Sanchez was convicted as described above and sentenced to a life term of imprisonment without the possibility of release before twenty-five years, followed by consecutive terms of imprisonment totaling 106 years. We have jurisdiction over Sanchez's appeal pursuant to A.R.S. §§ 13-4031 and 13-4033(A)(1).

Sufficiency of the Evidence

¶5 Sanchez first argues there was insufficient evidence of his participation in a conspiracy to murder the lieutenant. We review de novo whether there is sufficient evidence to support a conviction, and we will reverse only if there is no substantial evidence to support it. *Allen*, 235 Ariz. 72, ¶ 6. "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290 (1996). "The sufficiency of the evidence must be tested against the statutorily required elements of the offense." *State v. Pena*, 209 Ariz. 503, ¶ 8 (App. 2005).

¶6 A person commits conspiracy to commit first-degree murder if, "with the intent to promote or aid the commission of [first-degree murder], such person agrees with one or more persons that at least one of them or another person will engage in conduct constituting the offense." A.R.S. § 13-1003(A); *see also* A.R.S. § 13-1105(A)(1) (person commits first-degree murder by intentionally or knowingly causing the death of another with premeditation). Where, as here, "the object of the conspiracy was to commit any felony upon the person of another," the commission of an overt act in furtherance of the offense (first-degree murder) is not required. § 13-1003(A); *see also* § 13-1105(A)(1). The existence of an unlawful agreement need not be proved by direct evidence, and instead "can be inferred from the overt conduct of the parties." *State v. Avila*, 141 Ariz. 325, 327-28 (App. 1984).

¶7 There was substantial evidence to support Sanchez's conviction for conspiracy to commit first-degree murder. An inmate, acting as a lookout, alerted the men to the lieutenant's presence in the pod. Villalobos and Sanchez, acting together, attacked the lieutenant with metal shanks, which caused the officer to suffer serious injuries. Moraga blocked the sergeant from assisting the lieutenant, enabling Sanchez and Villalobos to attack the lieutenant without immediate staff intervention. When Sanchez was being detained, he stated that he had killed the lieutenant, suggesting that was the intent of the assault. Moreover, pieces of metal were found missing from both Sanchez's and Moraga's cells, and sandpaper, which the jury could infer had been used to sharpen them into weapons, was found in Villalobos's cell. Based on these facts, which demonstrate the coordinated nature of the attack, a reasonable jury could

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conclude there was a prior agreement to assault the lieutenant with the intent to cause his death.

¶8 Sanchez next argues there was insufficient evidence to support his liability as an accomplice for both the dangerous or deadly assault by a prisoner and the aggravated assault committed against the sergeant. An accomplice is a person who, with the intent to promote or facilitate the commission of an offense: “(1) [s]olicits or commands another person to commit the offense; or (2) [a]ids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense[; or] (3) [p]rovides means or opportunity to another person to commit the offense.” A.R.S. § 13-301. A person is criminally accountable for the conduct of an accomplice “in the commission of an offense including any offense that is a natural and probable or reasonably foreseeable consequence of the offense for which the person was an accomplice.” A.R.S. § 13-303(A)(3). “Accomplice liability attaches to ‘all persons who participate in the commission of a crime, whether . . . as principals, aiders and abettors, or accessories before the fact.’” *State v. Cordero*, 174 Ariz. 556, 559 (App. 1992) (alteration in original) (quoting *State v. McNair*, 141 Ariz. 475, 480 (1984)).

¶9 There was substantial evidence showing Sanchez, Villalobos, and Moraga were accomplices in the plan to assault the lieutenant. As described above, all three men acted in concert to ensure the attack’s success. Sanchez’s conviction for aggravated assault was premised upon Moraga’s touching of the sergeant while attempting to prevent him from aiding the lieutenant. See A.R.S. §§ 13-1203 (assault); 13-1204(A)(10)(a) (commission of assault while imprisoned or in custody). Sanchez’s conviction for dangerous or deadly assault by a prisoner was supported by Villalobos’s threatening exhibition of the shank towards the sergeant. See A.R.S. § 13-1206 (threatening exhibition of a deadly weapon or dangerous instrument by prisoner). The sergeant’s intervention in the attack, and the crimes committed as a result of that intervention, were foreseeable consequences of the attack on the lieutenant. Accordingly, there was substantial evidence supporting Sanchez’s convictions for aggravated assault and dangerous or deadly assault by a prisoner.

Imposition of Consecutive Sentences

¶10 Sanchez also contends the trial court erred by imposing consecutive sentences for his convictions for conspiracy to commit first-degree murder, deadly or dangerous assault by a prisoner against the lieutenant, and promotion of prison contraband, arguing A.R.S. § 13-116

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requires that the terms be served concurrently.² Because Sanchez did not raise this issue at sentencing, we review for fundamental error. *See State v. McDonagh*, 232 Ariz. 247, ¶ 7 (App. 2013). Imposition of consecutive sentences in violation of § 13-116, however, is fundamental error. *Id.*

¶11 Section 13-116 provides: “An act or omission which is made punishable in different ways by other sections of the laws may be punished under both, but in no event may sentences be other than concurrent.” In order to determine whether multiple offenses constitute a single act requiring concurrent sentences, we apply the three-part test set forth in *State v. Gordon*, 161 Ariz. 308 (1989). We first consider “the facts of each crime separately, subtracting from the factual transaction the evidence necessary to convict on the ultimate charge” – which is the offense at the center of the transaction and is often the most serious of the charges. *Id.* at 315. “If the remaining evidence satisfies the elements of the other crime, then consecutive sentences may be permissible.” *Id.* We then consider, in the context of the entire transaction, whether it was factually impossible to commit the ultimate crime without committing the secondary crime, which would suggest the defendant committed a single act. *Id.* Finally, we consider “whether the defendant’s conduct in committing the lesser crime caused the victim to suffer an additional risk of harm.” *Id.* “If so, then ordinarily the court should find that the defendant committed multiple acts and should receive consecutive sentences.” *Id.*

¶12 Applied here, all three *Gordon* factors support the imposition of consecutive sentences. The ultimate crime was the conspiracy to commit first-degree murder. All that is required in support of that charge is evidence of an agreement between the parties to commit the offense. *See* § 13-1003(A). Subtracting evidence of the agreement from the entire transaction, evidence still remained that the inmates produced shanks and actually assaulted the lieutenant, supporting Sanchez’s convictions for promoting prison contraband and deadly or dangerous assault by a prisoner. *See* § 13-1206 (deadly or dangerous assault by prisoner); A.R.S. §§ 13-2501(1) (deadly weapon defined as contraband), 13-2505(A)(3) (promoting prison contraband). Moreover, it is factually possible to commit conspiracy to commit first-degree murder without actually taking

²Although Sanchez summarily asserts all five of his sentences should have been concurrent, he does not raise any argument as to the aggravated assault and dangerous or deadly assault by a prisoner counts committed against the sergeant. We consider those claims waived, and decline to consider them further. *See State v. Bolton*, 182 Ariz. 290, 298 (1995) (“Failure to argue a claim on appeal constitutes waiver of that claim.”).

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any further actions in furtherance of that conspiracy—such as manufacturing shanks or actually assaulting the target of the conspiracy. *See* § 13-1003(A). Finally, the assault on the lieutenant and the use of contraband to do so each exposed the lieutenant to additional risk of harm. The trial court did not err in imposing consecutive sentences.

Disposition

¶13 Sanchez's convictions and sentences are affirmed.